

cies. You are familiar, I know, with the book by Dr. Harold Cross the definitive work on this whole subject "The People's Right To Know." Written under the auspices of our organization, it was published in 1953. It was written, obviously, a little before that, when the Administrative Procedure Act was still fairly young.

Dr. Cross, however, in this book, which now goes back more than a dozen years, made the statement that unhappily, as soon as the act was adopted, erosion of its ideals set in.

That erosion, as we all know, and as this committee has heard, continued. The powers that were bestowed under this act for withholding information have not been used as judiciously as we think the framers intended them to be used. We feel the ambiguous phrases in the act provide, as I have indicated earlier, too much discretion, not too little, and we feel that the legislation of the general type which is being considered here does not provide any automatic solutions or determinations as Mr. Schlei indicated, but rather narrows the discretion. Even within the exemptions which are listed in the bill, there is still some discretion.

Secondly, we think that it brings into the picture a third party to adjudicate, when there are questions about the judgment and the discretion which are used. We think it is unrealistic, under our present situation to have any officeholder in the executive department all the way down the line decide that information which he has and which somebody wants should not be released and then be in a position of presiding over any appeal from that decision.

We think the clause here which provides for court review of any such decision is sound and one of the basic parts of needed corrective legislation.

The second position stated by Mr. Schlei in what he called a basic thesis is that there are no formal words that can protect the public interest well enough; that the fault is not with the draftsmanship of this proposal, but with its approach. With this position, we disagree very fundamentally, and we think this gets to the philosophic heart of the question before this committee.

Our own position is that the Administrative Procedure Act and the other laws which are on the books have been inadequate in one important respect, and that is recognizing—writing into law—the public's right to know. The fact is that in the present situation, as we see it, the burden of responsibility for public knowledge of government affairs is fundamentally misplaced. It shouldn't be up to the American public, and the press is simply their representatives, to fight daily battles just to find out how the ordinary business of their government is being conducted. Rather, it should be the responsibility of their employees, who conduct this business, to tell them.

Now, this committee has heard many times of the inadequacies of the Administrative Procedure Act. We know how it has thwarted, oftentimes, rather than helped in the disclosure of information. But for all of its weaknesses, it has been stronger in respect to certain interested parties, as they are described in the legislation than as a public information section, as it was originally called.

Again referring to Dr. Cross, he found back in 1953, in the early history of this act, that it was too restrictive in limiting the availability of information to persons "properly and directly concerned."